

Service Date: January 22, 2014

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Complaint of)	REGULATORY DIVISION
James T. and Elizabeth A. Gruba,)	
Leo G. and Jeanne R. Barsanti, and)	DOCKET NO. D2010.2.14
Michael W. and Frances E. Paterson)	
on Behalf of Themselves and Others)	ORDER NO. 7084g
Similarly Situated,)	
)	
Complainants,)	
)	
v.)	
)	
NorthWestern Energy,)	
)	
Defendant)	

PROCEDURAL ORDER

1. On September 25, 2013, the Montana Public Service Commission (Commission) issued an Order dismissing all claims asserted or alleged in the Amended Complaint not relating to the ownership charge claim. This docket is proceeding solely on the ownership charge claim.

2. On September 25, 2013, the Commission, through delegation to staff, issued a Notice of Opportunity to Intervene in Complaint Proceeding, setting a deadline of October 25, 2013, for parties to intervene.

3. On October 25, 2013, the Montana Consumer Counsel (MCC) filed a Petition for Intervention.

4. On October 29, 2013, the Commission, through delegated staff authority, granted intervention to the MCC.

5. The Commission, through delegation to staff, hereby establishes the Procedural Order (Order) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or its staff. A party may apply for reconsideration of this Order within ten days of its service date. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records, and memoranda of NorthWestern Corporation d/b/a NorthWestern Energy (NWE) at any time. Mont. Code Ann. § 69-3-106.

Schedule

6. This Order sets the discovery schedule for this docket. The following pre-filed testimony and discovery must be filed at the Commission and served on all parties by the following deadlines:

- (a) February 28, 2014: Complainants' Initial Testimony due.
- (b) March 21, 2014: Final day for written discovery on Complainants' Testimony.
- (c) April 11, 2014: Final day for Complainants to respond to discovery.
- (d) May 2, 2014: Defendant's and Intervenor's Response testimony due.
- (e) May 23, 2014: Final day for discovery on Defendant's and Intervenor's Response Testimony.
- (f) June 6, 2014: Final day for Defendant and Intervenor to respond to discovery.
- (g) June 20, 2014: Complainants' Reply Testimony due.
- (h) July 1, 2014: Final day for discovery on Complainants' Reply Testimony.
- (i) July 11, 2014: Final day for responses to discovery on Reply Testimony.
- (j) July 18, 2014: Prehearing Memorandum due.
- (k) August 5, 2014: Hearing.

Service and Filing

7. A party must serve a copy of every pleading, motion, brief, discovery request or response, and other document it files in this proceeding on every other party. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will

not post an e-filed document to its website until it receives the original from the filing party.

Service or filing by means of facsimile is prohibited. The following parties must each be served at minimum one (1) hardcopy by mail and one (1) electronic copy by e-mail:

Russell Doty
Attorney for Complainants
4957 West 6th St.
Greeley, CO 80634
Iwin4u1@earthlink.net

Nedra Chase
NorthWestern Energy
40 East Broadway Street
Butte, MT 59701
nedra.chase@northwestern.com

Mary Wright
Montana Consumer Counsel
616 Helena Ave.
Suite 300
PO Box 201703
Helena, MT 59620
mwright@mt.gov

In addition, the following individuals must be provided one (1) electronic copy by e-mail:

Leo Barsanti
Complainant
leoj47@msn.com

Sarah Norcott
NWE
sarah.norcott@northwestern.com

Bob Nelson
MCC
robnelson@mt.gov

Additional individuals interested in the docket may view filings by visiting the Montana Public Service Commission website at the following address:

<http://psc.mt.gov/Docs/ElectronicDocuments/>

(Type the docket number “D2010.2.14” exactly into the space marked “Docket #” under “Simple Search” and click on Submit.)

Intervention

8. The deadline for intervention in this proceeding was October 25, 2013. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

Discovery

9. Data requests are the primary method of discovery in proceedings before the Commission, but parties may employ techniques of prehearing discovery permitted in state civil actions. Admin. R. Mont. 38.2.3301. The Commission directs the parties to prepare data requests according to the following guidelines:

- a. Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NWE, PSC-009 through 016 to an intervenor, and PSC-017 through 019 again to NWE).
- b. At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- c. For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- d. The following are examples of acceptable data requests:

PSC-006 RE: Purchased Gas Contracts
Witness DOE, JBD-4:13-15.

Please provide the origination and expiration date for each contract.

PSC-007 RE: Bypass
Witness ROE, FAR-14:11-26

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?

- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

10. A party may file an objection to a data request within ten (10) calendar days from service or by the deadline to respond, whichever is earlier. The Commission may schedule oral argument before ruling on an objection. The Commission will consider a party that does not object within the applicable deadline to have accepted the data request. If a party objects based on privilege, it must file a privilege log by the deadline to respond with sufficient information for the Commission to determine whether the privilege applies. If a data request asks for trade secret information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.

11. If a discovery response fails to answer the request, the discovering party may move within seven calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

12. In response to a party's failure to answer written discovery, the Commission may: (1) Refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

13. A party may submit written discovery after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

Pre-hearing Motions, Conferences and Memoranda

14. A party must make a pre-hearing hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

15. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

16. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Contested issues; (2) uncontested issues; (3) witnesses it intends to call; (4) exhibits and discovery it intends to introduce; (5) exhibits and discovery that the parties have agreed to admit into evidence; and (6) any special accommodations sought regarding witness sequence or scheduling. Whenever a party moves for the admission of a discovery response, it must identify the number of the request, the responding witness, and the issue addressed.

Hearing

17. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

18. Prior to the hearing, the parties must arrange with the court reporter and presiding officer to consistently mark all proposed exhibits and pre-filed testimony for reference.

19. A party must make each person that authored a discovery response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination and allow admission of the evidence without the author. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

20. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff, unless it shows good cause why copies are not available. A party moving to admit discovery into the record must provide a copy for the court reporter.

21. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

Open Meetings

22. All Commission meetings are open to the public except as provided by law. The Commission issues notice of routine business meetings and work sessions through a weekly agenda service list. In order to receive notice of the weekly agenda, which may relate to this proceeding, a party must request to be added to the weekly agenda service list.

DONE AND DATED this 16th day of January 2014, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

W. A. (BILL) GALLAGHER, Chairman
BOB LAKE, Vice Chairman
KIRK BUSHMAN, Commissioner
TRAVIS KAVULLA, Commissioner
ROGER KOOPMAN, Commissioner